

PLANNING REQUIREMENTS IN HOUSING DEVELOPMENT

By:

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Abstract

Malaysian government believes in the concept of human settlement that is equipped with basic utilities, social facilities and proper landscape. Thus the private developers, who remain to be the sole producer of housing, are not merely constructing a house but they are developing a living environment that gives a proper and pleasant place to stay. In ensuring this, there are certain standards, rules and requirements that need to be followed by the private housing developers and one of them come from the planning authority. The local planning authority that governs the planning and development of an area imposed planning requirements that need to be complied with before any approval for planning permission could be granted. The private developers, therefore, have to understand the requirements set by each local planning authority. This is because the planning requirements vary according to state and local planning authority. This paper, therefore, concentrates on the planning requirements in general, without any particular case study as it could provide a basic knowledge as well as the rationale for such a requirement. Besides that, the paper attempts to look into the impact of planning requirements or planning controls on to the development.

1.1 Introduction

As the title of the paper suggests it is the writer intention to highlight the topics on development controls exercised by the Local Planning Authority (LPA) in Malaysia. Besides planning the area based on the concept of development plan, the LPA are given the task or responsibility to control the development. Development control is necessary to ensure the actual development that takes place is in accordance with the planning. Thus, the development control could be said as a follow-up mechanism after LPA plans the area. This is vital as the LPA is only the planning agency and not the implementation agency.

Hence, this paper seeks to outline the requirements in housing development with special reference to the planning authority. Planning authority includes both the JPBD or the State Planning Department and the Local Planning Authority who is also the Local Authority for the area. Besides the planning requirements, there are other requirements from the various technical departments such as the JKR, TNB, STM, JPS, JAS etc., but will not be covered in this paper. However, it has to be noted here that all the requirements from the other related technical departments have to be complied with before an approval of planning application is to be given.

1.2 The Development Control System

According to T. Mahesan (1996) Development Control can refer to two aspects in planning. Firstly, development controls arise when the landowner applies to the LPA for planning permission to build a building on his land, which has already been subdivided. In this respect the landowner or the applicant has only got to conform to the building by-laws and to the use of land as indicated in the local plans (if any). Secondly, it involves a more complex type of development that needs the subdivision and conversion of land. Several technical departments will be involved by giving their comments towards the applications. The procedure can be very tedious, time consuming and sometimes frustrating, as it needs approvals from all the technical departments involved (Mahesan, 1966).

However, as far as the LPA is concern, the expression “development” is of prime importance. This is because any works or operations that fall within the definition of development are subject to planning permission that needs to be applied from the LPA. Without the planning permission, no development can take place.

The Town and Country Planning Act 1976 (Act 172) empowered the LPA to control the use of land or building and any operation that falls within the definition of development. Thus, the Act provides for:

- a) Matters that shall constitute “development”
- b) Those matters that shall not constitute “development”
- c) Those matters that are permitted “development” which shall not require planning permission

According to the Act, “development” means the carrying out of any building, engineering, mining, industrial, or other similar operation in, on, over or under land, the making of any material change in the use of any land or building or any part thereof, or the subdivision or amalgamation of land.

The definition of development needs to be clearly understood, as it has implication on the landowner. Sec 19 of the Act provides that, “no person, other than a LPA, shall commence, undertake or carry out any development unless planning permission in respect of the development has been granted to him”. Any development that takes place prior to the approval of planning application will be

served with the Enforcement Notice. The landowner therefore has to know whether the proposed activity or operation constitutes development and if it does, the next question asked should be, whether or not any planning permission is needed. This is because not all development is required to have a planning permission. Sec 19(2) specifies the types of development that are exempted from planning permission.

1.3 The Need for Planning Permission

The Town and Country Planning Act 1976 clearly spell out that no development can take place without any planning permission, unless the development falls under Sec 19(2) of the Act. The landowner or the developer should apply the planning permission from the LPA, who is the approval authority according to the Act. As the approving body, the LPA has to process the application accordingly and Sec 22(3) of the Act provides that the LPA, after taking into consideration the application, may grant planning permission either absolutely or subject to such conditions as it thinks fit to impose, or refuse to grant planning permission.

As the planning and approving agency, the LPA can ensure the development to be carried out in a proper manner according to what has been planned. The LPA controls the development by restricting and allowing only suitable development that will not only benefit the developers but also the public at large. For that reason, the imposition of planning requirements or planning controls is justified. Even though it may have some impacts on the developers the rationale for controlling the development is well accepted. This includes:

1. ensuring development that are systematic, safe, effective and harmony
2. considering the needs of the public interest such as the provision of public facilities
3. ensuring a compatible use with the adjoining land
4. giving an added value to the project

1.4 Application Procedure for Planning Permission

As mentioned before, the procedure for planning application may varies according to state and LPA. However, Part IV of the Act has outlined some of the general rules in planning control. Due to that, any LPA that has adopted Part IV of the Act, has to comply with the provisions stated in the Act.

According to Sec. 21 of the 1976 Act, an application for planning permission shall be made to LPA and shall be in such form, accompanied by such documents, plans and fees as may be prescribed. Hence, it is clear that there is a set of procedure that need to be followed by the applicant in submitting their application. The standard procedure will not only smoothened the process but at

the same time enable the applicant to familiarize with the procedure. This will certainly lead to efficiency in the application process within the LPA.

The application for planning permission can be made by any person, and not necessarily the landowner. But, if the application is made by a person other than the landowner, a letter of consent from the landowner is needed and be endorsed on the application. Sec. 21(2) of the Act allow the developers to act on behalf of the landowner and to ensure a fast approval, the applicants or the developers should be well verse with the procedure and the requirements as imposed by that particular LPA.

For the case of MBBJ, the procedure for planning applications involves the submission of the following documents:

- i. Application form
- ii. Processing fee
- iii. 15 copies of layout plan
- iv. 5 set of building plan
- v. 4 set of contour plan
- vi. Development Proposal Report (if applicable)
- vii. A copy of land title

For the case of MBBJ, the application will not be processed until and unless the application is complete. For that reason, every applicant or the developers should ensure that all the documents needed are made available.

1.5 Treatment of Application

Every applications that are submitted completely to the LPA will be processed and the time frame for each LPA differs as it depends on the number staff available and the amount of application received. Nevertheless, each LPA has set their administrative time frame or the client's charter that sets the time frame for processing.

In arriving at its decision, the LPA is required by Sec 22(2) of the Act to take into consideration matters that are "expedient or necessary for proper planning" and in particular

- a) the provisions of the development , if any,
- b) the provisions that it thinks that are likely to be made in any development plan under preparation or to be prepared,
- c) the provision of the Sewerage Act 1993
- d) the Development Proposal Report
- e) any objections made under Sec 21

Besides the development plan that act as the main reference, there are some other matters that have to be considered by the LPA in ensuring a good and proper

planning for the area. Such matters include the preparation of various reports, the needs to comply with the planning standards as well as other related state policies

1.5.1 Development Plan

The Development Plan, which consists of Structure Plan and Local Plan, has become the main reference or a basis for development control. The development plans provide the guidelines in terms of policy, zoning or land use as well as the detailed planning standards. Any proposal for development should be in line with the general proposals set in the Structure Plan and the detailed development is guided by the Local Plan for the area. As far as possible the LPA will not allow any non-conformity with the policy and the proposals in the development plan. Thus, the developers should then refer to those plans (if any) and to comply with the proposals in the development plan.

However, there are circumstances where approvals may be granted even though it does not conform to the proposals in the local plan. The changes and alterations in the plan are inevitable so as to cope with current demand and problems. The change of land use from commercial to housing for example may be permitted in order to enhance the value of the land. Developers, who rely on the market trends, will normally apply for development that may be different from what has been allocated in the plan. Thus the element of flexibility in the plan making process needs to be addressed. Nevertheless, the changes need to be justified and rationalized by the applicant before it can be accepted and approved by the LPA.

Besides complying with the development plan, the applicants are also needed to prepare a Planning Brief or the Development Proposal Report as provided by Sec 21A of the Act.

1.5.2 Development Proposal Report

The Development Proposal Report or Laporan Cadangan Pemajuan (LCP) has been introduced in 1995 after the amendments of Act 172. Due to the amendments, all applications shall be accompanied by a Development Proposal Report prepared by a qualified person. Even though the Act does not require the preparation and submission of report in conjunction with the application of planning permission, it does imply that the State Government should act accordingly. Hence, the State Government may by rules, prescribe the requirement of such a report.

At present, there are more and more LPA that needs the submission of the report. For instance, in Johore, any development areas of more than 2 hectares or 5 acres need to prepare and submit the Development Proposal Report to the LPA. Besides the granting of planning application, Development Proposal Report is also needed, for application through SBKS (Surrender and Re-alienation), conversion

as well as for subdivision. The applicant is needed to submit 5 copies of the report together with the application.

The report consists of a written statement and a plan that aimed to:

- describe the present condition of the land
- describe the proposed development with consideration on planning matters, such as zoning, planning standards and other planning requirements
- describe the proposed development and its effect on the surrounding or the built environment

Development Proposal Report will be one of the references in processing the application. This is because the report is considered reliable as it contains additional information about the proposed development as well the existing situation. Unlike before, this information is not provided by the applicant in a written form but it has to be gathered by the approval body accordingly. The justification for the report has been clearly understood by the decision maker such as,

- 1) To give sufficient information about the proposed development
- 2) To ensure that all relevant matters are made available to the LPA
- 3) To help the LPA in making the right decision based upon relevant material consideration.

The DPR therefore enable the approval body to understand the whole situation with regards to the land as well as the proposed development. The availability of data and information provided by such report gives a detailed picture that could assist the LPA in making the decision. The clarification and justification provided by the report can actually expedite the whole process, as most of the information needed has been made available.

According to JPPD, the contents of Development Proposal Report reflect a compilation of expert quantitative analysis and qualitative assessment of a project's land use and development viability. Briefly speaking, the report should contain the following (JPBD):

1. Location plan
2. Site plan
3. Extract or Title of Land Ownership and Expressed Conditions (if any)
4. Site Analysis Plan
5. Development Concept Plan comprising of the following:
 - a) Development concept
 - b) Surrounding area development analysis
 - c) Land use and development intensity analysis, in accordance with the policy in the Structure Plan, planning guidelines, planning standards and other related laws, rules and regulations.

- d) Project justification
 - e) Preliminary environmental assessment
6. Proposed Layout Plan

Please refer to the Appendix 1 for the detailed content of the report

From the explanation it shows that the main concern of the report is to look into the development and its relation with planning aspects such as the zoning and all the planning standards, as well as its impact on the surrounding environment. As a LPA, they have to make sure that the proposed development is suitable and conform to their planning standards, government policies and compatible with to the surrounding uses.

After going through the development plan and the Development Proposal Reports, let us now look into the other matters that are being considered by the LPA in dealing with the application, that is the planning standards. Planning standards specifies the basic or minimum requirement for the provision of public amenities, open space, road width, building setback and car parking bays. Any local plan may have incorporated the elements of planning standards for the area.

1.5.3 Planning Standards

Planning standards have become one of the mechanism or tool in development control, exercised by the LPA. It is a requirement set by the LPA which guides the developers in preparing their development proposals. Developers should try to comply with the standards in order to get a fast approval. The planning standards are formulated by the JPBD Semenanjung Malaysia, and to be implemented by the LPA according to the local needs and environment. Thus, the standards may differ from each LPA.

The compliance with planning standards is vital, as the failure will lead to development that is not systematic. This is because planning standards will be able to create a development, which is properly planned in terms land use, intensity, provision for public facilities and environmentally sound. Hence the developers are at the end of the day creating a proper living environment and not merely constructing a building. This will of course benefit the house buyers. Even though developers have to incur extra cost in complying with the planning standards, they could generally accept the rationale for such requirement, especially when it gives an added value to the completed projects.

Some of the planning standards imposed by the LPA to control housing development are:

- Density (whether low, medium or high density)
- Building setback
- Open space

- Buffer zone
- Public facilities such as schools
- Other requirements that may be specified

The information related to the planning standards could be obtained from the officer in the planning authority over the counter service. The planning standards act as a basis in preparing the proposed project. Developers should consider all the planning standards applicable in order to come up with a systematic, economic and a convenient development.

1.6 The Impact of Planning Requirements on Housing Development

With respect to housing development specifically, planning controls may restrict the amount of land available for housing, and determine the density as well as the types of houses to be built. The developers are also required to set a side land for the provision of public amenities and infrastructure. Private developers need to comply with the procedure and the requirements set by the LPA in order to get the planning permissions.

Planning seems to be one of the factors that affect the land supply, but the question is to what extent is the supply curve affected by the planning controls? In answering this, so long as planning controls are operational, they must represent an effective restriction on land supply through their mechanism of development control. However, is planning really a constraint? Planning authority is often being flexible in performing their duties, and to a certain extent, they may give way to the market. In case where there is a lot of pressure for development, the control may be relaxed. Besides that, there are circumstances where political intervention comes in. Thus even though planning restricts or controls the amount of land available there is a tendency for changes in the planning decisions which allow the element of flexibility in planning to operate.

LPA can also affect the timing of the development especially when there is a delay in getting the approval. Some developers may try to waive on some of the planning requirements and enter into negotiation process with the LPA. The negotiation is always time consuming and this will of course affect the timing of the development.

The intensity of the development determined by the LPA is quite often flexible in the sense that it allows some changes to be made. This is permissible in order to meet the current demand. However, the applicant or the developers need to apply for the changes by putting forward their justification. On the part of LPA, they will study the proposal by looking into the impact of the changes. For that reason, any approval for the changes will be charged in the form of development charge. Theoretically the payment received is to be allocated or used up for the purpose of providing the facilities that will be needed due to the increased density or population in the area.

Overall the planning requirements imposed by the planning authority will have some impact on the total cost of development. Unless the cost is known, it will not be borne by the developers, but will be absorbed in the selling price (buyer) or the land cost (landowner).

1.7 Conclusion

Planning requirements in housing development has to be considered as part of the development cost. This is because housing developers need to comply with all the requirements imposed by the planning authority in order to get the planning permission. The imposition of such requirement some how could be accepted as it could enhance the value of the housing projects. The completed project will not only equipped with the basic utilities but there are other public facilities. All the planning requirements imposed will lead to a creation of a planned housing community with a pleasant environment.

It should be emphasized here that the planning standards imposed by the LPA should be reviewed and upgraded from time to time so that they conform to local and currents needs. Some standards may be out-dated and no longer suitable at the present situation. For example, the requirement for oxidation pond for new development is no longer applicable due to the existence of a new technology for waste treatment.

But there are some planning requirements that could be considered very costly by the developers. As such, the developers felt that some of the planning requirements should be borne by the Local Authority as part of their duty in providing services for the community. Such a requirement will have some effect on the housing price as the developers will transferred the cost on to the house buyer. Thus, indirectly it can be said that the increasing cost in fulfilling the planning requirements has pushed up the house price. Particular attention should therefore be given in addressing the issue of high house price due to the imposition of such requirements.

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Appendix 1: Detailed content of Development Proposal Report (DPR)

Content of DPR
<ol style="list-style-type: none">1. Introduction2. Development concept and its justification3. Location plan and Site plan4. Particulars of Title5. Analysis on issues and potential for development<ul style="list-style-type: none">▪ <i>Description on the topography and site slope</i>▪ <i>Information on existing sewerage, drainage and main roads</i>▪ <i>Information on road reserved and TIA (if necessary)</i>▪ <i>Existing land use, natural environment and landscape</i>▪ <i>Potential features of the site and the surrounding</i>6. Analysis on land use and the intensity of the development<ul style="list-style-type: none">▪ <i>Identification of constraints and restrictions imposed on to the development based on the zoning, density, building height, plot ratio and plinth area</i>▪ <i>Proposed development with consideration given on the planning standards and other restrictions</i>7. Analysis on the surrounding development8. Coordination with structure plan and local plan as well as planning guidelines9. Alternative of development concept<ul style="list-style-type: none">▪ <i>Alternative of development concept with its justification and rationale</i>10. Proposed development<ul style="list-style-type: none">▪ <i>Based on the development concept, the detailed layout plan is prepared.</i>▪ <i>Mitigation measures against flooding and any adverse impact on to environment</i>▪ <i>Social impact assessment</i>▪ <i>Proposed landscape plan according to the National Landscape Guidelines</i>▪ <i>Measures to conserve/preserve identified buildings</i>▪ <i>Proposed Earthwork</i>▪ <i>Proposed road circulation system</i>▪ <i>Phasing of the development if applicable</i>